

DEPARTMENT OF HEALTH AND HUMAN SERVICES**CFDA 93.210 TRIBAL SELF-GOVERNANCE PROGRAM - IHS
COMPACTS/FUNDING AGREEMENTS****I. PROGRAM OBJECTIVES**

The objective of this program is to make financial assistance awards to Indian Tribes to enable them to assume programs, services, and functions or portions thereof of the Indian Health Service (IHS), Department of Health and Human Services (HHS) that are otherwise available to Indian Tribes (Tribes) or Indians.

II. PROGRAM PROCEDURES

Title V of the Indian Self-Determination and Education Act (ISDA) (Pub. L. No. 106-260), which was signed into law August 18, 2000, provided permanent status for the IHS Tribal Self-Governance program.

A Self-Governance compact is a legally binding and mutually enforceable written agreement, including such terms as the parties intend to be in effect year after year without the need for renegotiation, that affirms the government-to-government relationship between a Self-Governance Tribe and the United States. As a result, the provisions of compacts vary significantly, with only minimal cross-cutting compliance requirements.

A funding agreement (FA) is a legally binding and mutually enforceable written agreement that identifies the programs, services, functions, and activities or portions thereof (PSFAs) that the Self-Governance Tribe will carry out, the funds being transferred from Service Unit, Area and Headquarters levels in support of those PSFAs, and such other terms as are required, or may be agreed upon, pursuant to Title V. Funding under FAs may be in the form of multi-year agreements.

Tribal compactors may provide health care services directly at facilities operated by the compactor or by operating a contract health services program as part of the FA. Contract health services are services provided to IHS-eligible beneficiaries by private sector health-care providers, such as hospitals and physicians, under contract with the tribal compactor.

Source of Governing Requirements

Title V of the ISDA, as amended, is codified at 25 USC 458aaa.

Regulations concerning the general administration of Indian health programs are found at 42 CFR part 136. Regulations governing Self-Governance compacts and FAs are found at 42 CFR part 137.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Funds may be used to carry out and deliver the health services program. The FA generally identifies the PSFAs (or portions thereof) to be performed or administered by the Tribe (25 USC 458aaa-4).
2. Funds may be used to redesign and consolidate PSFAs (25 USC 458aaa-5(e)).
3. A Self-Governance Tribe may incur costs that are reasonable in amount and appropriate to the investment responsibilities of the Self-Governance Tribe (42 CFR section 137.110).
4. Funds may be used to meet matching or cost participation requirements under any other Federal or non-Federal program; when used in this manner they are considered non-Federal funds (42 CFR section 137.217).
5. For contract health services, the Tribal compactor is the payor of last resort. The contract provider must first seek payment from all alternate resources, such as health care providers and institutions; health care programs including, but not limited to, programs under the Social Security Act (i.e., Medicare or Medicaid); State or local health care programs; and private insurance before seeking payment from the Tribal compactor. Where a third-party liability is established after the claim is paid, reimbursement from the third party should be sought (42 CFR section 136.61).

B. Allowable Costs/Cost Principles

A Self-Governance Tribe must apply the cost principles of the applicable OMB circular, generally OMB Circular A-87, except as modified by 25 USC 450j-1, other provisions of law, or any exemptions to applicable OMB circulars subsequently granted by OMB (42 CFR sections 137.167 and 137.168).

C. Cash Management

A Self-Governance Tribe may retain and spend interest earned on any funds paid under a compact or FA (25 USC 458aaa-7(h); 42 CFR section 137.100).

E. Eligibility

1. Eligibility for Individuals

- a. *Eligibility for services within facilities operated by the IHS (which are billed by IHS to the Tribe) or run by a tribal organization for the Federal Government:*
- (1) Individuals of Indian descent belonging to the Indian community served by the local facilities and program are eligible to receive services. An individual may be regarded as within the scope of the Indian health and medical service if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in Indian affairs, or other relevant factors in keeping with the general Bureau of Indian Affairs practices in the jurisdiction (42 CFR section 136.12).
 - (2) Non-Indian women pregnant with an eligible Indian's child are eligible for services. In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. Services may be provided only during the period of her pregnancy through postpartum (generally six weeks after delivery) (42 CFR section 136.12).
 - (3) Services may be provided to non-Indian members of an eligible Indian's household if a medical officer in charge determines that such services are needed to control an acute infectious disease or a public health hazard (42 CFR section 136.12).
 - (4) Otherwise ineligible individuals may receive temporary care and treatment in case of an emergency, as an act of humanity (42 CFR section 136.14).
 - (5) Services may be provided on a cost basis to otherwise ineligible persons in accordance with the criteria in Section 813 of the Indian Health Care Improvement Act (25 USC 1680c(b)(1)(B)).

b. *Eligibility for contract health services.*

(1) *General requirements.*

- (a) An individual must meet the requirements outlined in paragraph III.E.1.a above (42 CFR section 136.23(a)); and
- (b) Must either reside in the United States and on a reservation located within a Contract Health Service Delivery Area (CHSDA) as defined under 42 CFR section 136.22; or, if he/she does not reside on a reservation, reside within a CHSDA; and
- (c) Be a member of the Tribe or Tribes located on that reservation or of the tribes or tribes for which the reservation was established; or maintain close economic and social ties with said Tribe or Tribes (42 CFR section 136.23(a)).

(2) *Additional considerations for certain populations.*

- (a) *Students* - Students continue to be eligible for contract health services during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks and for a period not to exceed 180 days after the completion of their studies (42 CFR section 136.23(b)(1)).
- (b) *Transients* - Transient persons, such as those who are in travel or are temporarily employed, remain eligible for contract health services during their absence (42 CFR section 136.23(b)(2)).
- (c) *Other Persons* - Other persons who leave the CHSDA in which they are eligible and are neither transients nor students remain eligible for contract health services for a period not to exceed 180 days from such departure (42 CFR section 136.23(c)).
- (d) *Foster Children* - Indian children who are placed in foster care outside a CHSDA by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care (42 CFR section 136.23(d)).

2. **Eligibility for Group of Individuals or Area of Service Delivery** - Not Applicable
3. **Eligibility for Subrecipients** - Not Applicable

H. Period of Availability of Federal Funds

1. An FA shall have the term mutually agreed to by the parties. Absent notification from a Tribe that it is withdrawing or retroceding the operation of one or more PSFAs identified in the FA, the FA shall remain in full force and effect until a subsequent FA is executed (42 CFR section 137.55).
2. All funds paid to a Tribe in accordance with a compact or FA shall remain available until expended (25 USC 458aaa-7(i)).

J. Program Income

1. For direct care services, the tribal compactor must pursue reimbursement from all applicable sources (25 USC 1621e, 42 USC 1395qq, and 42 USC 1396j).
2. All Medicare, Medicaid, or other program income earned by a Tribe shall be treated as supplemental funding to that negotiated in the FA. The Tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 USC 1601 *et seq.*) provides otherwise for Medicare and Medicaid receipts (25 USC 450j-1 and 25 USC 458 aaa-7(j)). Such funds shall not result in any offset or reduction in the amount of funds the Self-Governance Tribe is authorized to receive under its FA in the year the program income is received or for any subsequent fiscal year (42 CFR section 137.110).
3. *Use of Funds - Direct Billing Medicare and Medicaid* - Tribes electing to directly bill for Medicare and Medicaid shall first use such income for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under Medicare or Medicaid programs. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions shall be used solely for improving health resources deficiency level of the Tribe (Pub. L. No. 106-417; 25 USC 1645).
4. *Use of Funds Collected through HHS* - Tribes electing to receive Medicare and Medicaid reimbursement through HHS shall use such income for achieving compliance with the applicable conditions and requirements of Medicare and Medicaid (exclusive of planning, design, and construction of new facilities) (Pub. L. No. 106-291 114 Stat. 978, 42 USC 1395qq, and 25 USC 1642).

IV. OTHER INFORMATION

Funds previously awarded for tribal self-governance planning and negotiation cooperative agreements under CFDA 93.210 are now funded under a separate CFDA number – CFDA 93.444. For purposes of the audit, CFDA 93.444 is considered a separate program and should not be clustered with CFDA 93.210.